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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/610,107

07/05/2000

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P19702.P03

4696

7055 7590 12/02/2010
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EXAMINER

SHANG, ANNAN Q

ART UNIT

PAPER NUMBER

2424

NOTIFICATION DATE

DELIVERY MODE

12/02/2010

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KEIICHI KOSHIBA

Appeal 2010-000338
Application 09/610,107
Technology Center 2400

Before JOHN C. MARTIN, THOMAS S. HAHN, and
CARL W. WHITEHEAD, JR., *Administrative Patent Judges*.

HAHN, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellant invokes our review under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 50, 51, 54-75, and 84-89. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant claims a data management system and method for communication from a provider to a recipient first communications device of broadcast programming that includes information units concerning items in the broadcast. The recipient uses the first communications device, which receives and broadcasts, to send verification data along with identification of a selected information unit for storage in an information manager database where reference data associated with the selected information unit is linked to the received signal. A second communications device is used to also send the recipient verification data to the information manager, which on again receiving the verification data enables transmission of the linked reference data to the second communications device.² Claim 50 is illustrative:

50. A data management method, comprising:

providing a plurality of information units, each information unit being a part of a broadcast program and carrying information representing one of various items in said broadcast program, said broadcast program being provided to an information recipient by a unidirectional communication from an information provider;

receiving, at an information manager from a first communications device associated with an information recipient, and independently of a second communications device distinct from the first communications device, an information recipient verification data that identifies the information recipient and identifying data particular to and distinctly identifying an information unit selected by the information recipient, the identifying data being stored in a database in association with the information recipient verification data when the information manager receives the identifying data and information

² See generally Spec. 34:11 – 39:18; Figs. 1, 8.

recipient verification data, and the identifying data being linked in the database to reference data associated with and defining features of the information unit selected by the information recipient; and

permitting access to the information manager from the second communications device independently of the first communications device,

wherein, upon sending the information recipient verification data from the second communications device to the information manager, the database enables access from the second communications device to the identifying data associated to said information recipient verification data, and in turn, to the reference data linked to the identifying data, over a path different from a path over which the information manager receives the information recipient verification data and identifying data from the first communications device.

Rejections

1. The Examiner rejected claims 50, 51, 54-75, and 84-89 under 35 U.S.C. § 102(e), as being anticipated by Ferris, U.S. Patent Publication 2006/0288374 A1³ (Ans. 3-10).
2. In the alternative, the Examiner also rejected claims 50, 51, 54-75, and 84-89 under 35 U.S.C. § 103(a), as being obvious over Ferris (*see* Ans. 5).

Appellant's Contentions

Of the independent claims 50, 75, 84, and 85, Appellant solely argues claim 50 (App. Br. 11-19; Reply Br. 2-11). We, accordingly, select claim 50 as being representative for this group, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

³ The effective filing date for this document precedes Appellant's earliest effective filing date and is not at issue.

Except for dependent claims 51 and 54, which are argued with specificity as to contended Ferris deficiencies, Appellant relies on arguments asserted for independent claim 50 and merely points out what the other dependent claims require without separate argument for patentability (App. Br. 19-24). Therefore, the dependent appealed claims are not separately argued, except for claims 51 and 54. *See* 37 C.F.R. § 41.37 (c)(1)(vii); *see also In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

Appellant asserts in arguing for claim 50 that Ferris fails to teach or suggest the recited “information unit” and “reference data” (App. Br. 14-19; Reply Br. 6-10).

In arguing for claim 51, Appellant asserts that Ferris fails to teach or suggest a first communications device that receives an information unit from an information provider, because the Ferris remote control device 417 does not receive a broadcast program as recited in base independent claim 50 (App. Br. 23, 24).

Appellant contends in arguing for claim 54 that while the Ferris remote control shows displayable choices for different users, Ferris fails to teach or suggest a remote control having a plurality of buttons for designating different information recipient verification data (App. Br. 24).

ISSUES⁴

Appellant’s contentions present us with the issues of:

1. Does Ferris teach or suggest “information unit” and “reference data” as recited in claim 50?

⁴ Arguments that Appellant could have made but did not make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

2. Does Ferris teach or suggest a first communications device that receives an information unit from an information provider as recited in claim 51?
3. Does Ferris teach or suggest a remote control having a plurality of buttons for designating different information recipient verification data as recited in claim 54?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of evidence.

The Invention

1. Appellant teaches that a broadcast receiver terminal 2 receives broadcast and information units, and also transmits information. The operation of this broadcast receiver terminal 2 is taught as being controlled by a viewer using a remote controller 7 (Spec. 36:21-26).

Ferris

2. Ferris discloses a communication “system, by means of which content is disseminated from broadcasters 402 to broadcast receivers 405 in users’ homes 416” The received broadcast content includes programs and segments “such as infomercials and commercials” (§ [0048]; Fig. 3).
3. Ferris describes a consumer broadcast receiver device “on which advertisements, product and service offers, and other information (collectively, ‘display data’) may be shown to the user . . . [so the] user . . . may interact with such display data (for example, to purchase an advertised good)” (Abstract).

4. Ferris discloses having a user 418 control operation of the broadcast receiver 405 with a remote control device 417 (§ [0054]; Fig. 3).
5. A Ferris “home computer 419 [is] connected to the appropriate central processing station 420 over a known transport, such as the Internet, [so] users . . . have access to all the facilities offered by the handset 417, but in greater detail and with full graphical support” (§ [0061]; Fig. 3).
6. Setting user identity is disclosed by Ferris with an example where a “handset has three users within a household 308, Mary, Mike, and Robert. The user is prompted to select his or her identity 309 by pressing the corresponding side variable function button (15 in FIG. 1)” (§ [0103]; Fig. 2K).

PRINCIPLES OF LAW

Examined claims are interpreted as broadly as is reasonable using ordinary and accustomed term meanings so as to be consistent with the Specification, *In re Thrift*, 298 F.3d 1357, 1364 (Fed. Cir. 2002), while “taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification,” *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997), and without reading limitations from examples given in the Specification into the claims, *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

ANALYSIS

Claim 50

Appellant's arguments, summarized *supra*, are not persuasive to establish that the Examiner erred in rejecting representative claim 50 as being anticipated or, in the alternative, as being obvious over Ferris.

The Examiner finds, and we agree, that the claim 50 recited "information unit" is taught by the Ferris disclosure of broadcasters 402 transmitting content including infomercials and commercials (Ans. 10, 11; *accord* FF 2). Appellant disputes this finding by contending that it is the Ferris disclosed "program associated data (PAD) . . . [that] is analogous to the information units in claim 50," and that the "program associated data (PAD) is not provided as part of a broadcast program provided by a 'unidirectional communication'" as required in claim 50 (App. Br. 15). Continuing with this argument, Appellant argues that "[t]he only reasonable interpretation of broadcasters 402 in FERRIS is as conventional broadcasters that broadcast a 'broadcast program' as in claim 50, FERRIS is not reasonably interpretable as disclosing that broadcasters 402 broadcast 'information units' as in claim 50" (Reply Br. 7).

Consequently, Appellant disputes with conclusory argument the Examiner's interpretation of the recited "information unit" as encompassing Ferris infomercials and commercials, because Appellant is silent as to referencing evidence in the record supporting contended definitions, including any written description in the filed Specification. We agree with the Examiner's interpretation based on finding the disputed element is recited in defining context in claim 50. Specifically, claim 50 recites that an "information unit" is "a part of a broadcast program and carrying

information representing one of various items in said broadcast program.” Without conflicting evidence in the record, we find the Ferris disclosed infomercials and commercials to at least be announcements offering items or services to the public via broadcast content (*see* FF 2), which teaching we further find comports with ordinary and accustomed meanings for the disputed element. Accordingly, we, as does the Examiner, find Ferris disclosed infomercials and commercials to be “information units” as recited in claim 50. Based on the record, including a review of the Specification, we agree with the Examiner’s interpretation as being broadly reasonable as is required for examining claims. *See Thrift at 1364.*

Appellant also contends that “reference data” as recited in claim 50 is not taught by Ferris, because Ferris teaches “transaction histories” that fail to be read on by the recited “reference data.” (App. Br. 17; Reply Br. 8-10). Without addressing whether the recited “reference data” reads on the Ferris “transaction histories,” the Examiner finds, and we agree, that the claim 50 recited “reference data” is taught by the Ferris disclosure for transmission of memory stored product descriptions and pricing (*see* Ferris ¶¶ [0095] – [0102]; Figs. 2A – 2L) (Ans. 11, 12; *accord* FF 3).

We find Appellant’s arguments directed to “reference data” to be conclusory in at least lacking reference to evidence in the record supporting contended definitions, including written description in the filed Specification for the disputed element. We agree with the Examiner’s interpretation because the disputed element is recited in context in claim 50 as “reference data *associated with and defining features* of the information unit” (emphasis added). Accordingly, without conflicting evidence in the record, we find from ordinary and accustomed meanings for the recited terms that

product descriptions and pricing as disclosed by Ferris are “associated with” and provide “defining features” for “information units” as recited in claim 50. Again, based on the record, including a review of the Specification, we agree with the Examiner’s interpretation as being broadly reasonable as is required for examining claims. *See Thrift at 1364.*

Appellant, in association with asserting that Ferris is deficient because of the disclosed “transaction histories,” also contends that the Ferris disclosed “home computer 419” and the remote control device 417 displayed data shown in Figs. 2A – 2L are not read on by claim 50 (Reply Br. 9-10). We are not persuaded by these arguments.

In this instance the disputed claimed element is a “second communications device,” which the Examiner finds to be the Ferris “home computer 419” (Ans. 12). Appellant argues that the Ferris “home computer 419” is disclosed as receiving “transaction histories,” which Appellant contends are not the recited “reference data” (App. Br. 17). Appellant does not address the Ferris teaching that the “home computer 419 [is] connected to the appropriate central processing station 420 over a known transport, such as the Internet, [so] users . . . have access to all the facilities offered by the handset 417, but in greater detail and with full graphical support” (FF 5). Based on this evidence, we agree with the Examiner’s finding that the Ferris disclosed “home computer 419” is read on by the claimed “second communications device.” Accordingly, we are not persuaded by this argument that the Examiner erred.

Because Appellant’s arguments have not shown that the Examiner erred in rejecting representative claim 50, we will sustain the rejection of that claim and also the rejection of the other independent claims 75, 84, and

85. Further, we will sustain the rejection of dependent claims 55-74 and 86-89, which are not separately argued.

Claim 51

Appellant's arguments, summarized *supra*, are not persuasive to establish that the Examiner erred in rejecting separately argued dependent claim 51. The Examiner finds, and we agree, that the disputed first communications device is taught by Ferris at least in ¶ [0054] (Ans. 5). Specifically, we agree with the Examiner in finding Ferris teaches broadcast receiver 405, controlled by a remote control device 417, for receiving broadcast content including programs, infomercials, and commercials (FF 2-4). Based on the record, we regard the claim 51 recited first communications device to read on the combination of the Ferris broadcast receiver 405 and the remote control device 417 used to operate broadcast receiver 405 (*see* FF 1 and 4).

Because Appellant has not shown that the Examiner erred in rejecting dependent claim 51, we will sustain the rejection.

Claim 54

Appellant's arguments, summarized *supra*, are not persuasive to establish that the Examiner erred in rejecting separately argued dependent claim 54. The Examiner finds, and we agree, that the disputed remote control having a plurality of buttons for designating different information recipient verification data is taught by Ferris in disclosing the remote control device 417 (Ans. 5). We find Ferris teaches using a button actuated remote control to set multiple user identities with a disclosed example for three different users, where "[t]he user [of the remote control] is prompted to

select his or her identity 309 by pressing the corresponding side variable function button (15 in FIG. 1)” (FF 6).

Because Appellant has not shown that the Examiner erred in rejecting dependent claim 54, we will sustain the rejection.

ORDER

The Examiner’s decision rejecting claims 50, 51, 54-75, and 84-89 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED

gvw

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